

D.T.E. 04-51

Petition of Massachusetts Electric Company, pursuant to G.L. c. 164, § 14, for authorization and approval to: (1) execute one or more loan agreements or supplemental loan agreements with the Massachusetts Development Financing Authority in connection with the issuance of new tax-exempt debt to refinance outstanding tax-exempt bonds, in an amount not to exceed \$40 million, together with related financing and security agreements, and (2) issue one or more additional series of pledged first mortgage bonds. Massachusetts Electric Company also seeks exemptions from the advertising requirements of G.L. c. 164, § 15 and the par value requirements of G.L. c. 164, § 15A.

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FOR: MASSACHUSETTS ELECTRIC COMPANY
Petitioner

I. INTRODUCTION

On May 13, 2004, Massachusetts Electric Company (“MECo” or “Company”), filed with the Department of Telecommunications and Energy (“Department”), pursuant to G.L. c. 164, § 14, a petition for authorization and approval to: (1) execute one or more loan agreements or supplemental loan agreements with the Massachusetts Development Financing Authority (“MDFA”) in connection with the issuance of new tax-exempt debt in an amount not to exceed \$40 million, together with related financing and security agreements, and (2) issue one or more additional series of pledged first mortgage bonds. The Company also seeks an exemption from the competitive bidding requirements of G.L. c. 164, § 15 and the par value requirements of G.L. c. 164, § 15A.

Pursuant to notice duly issued, public and evidentiary hearings were held at the Department’s offices in Boston on July 16, 2004. No petitions for leave to intervene were filed. At the hearing, the Company presented the testimony of one witness in support of its petition: Robert G. Seega, assistant treasurer of MECo and assistant treasurer and director of treasury services for National Grid USA Service Company, Inc. The evidentiary record consists of 16 exhibits and four responses to Department record requests.¹

II. DESCRIPTION OF THE PROPOSED FINANCING

As part of the Company’s 2000 acquisition of Eastern Edison Company (“EECo”), MECo assumed EECo’s obligations with respect to \$40,000,000 of tax-exempt refunding

¹ In addition, pursuant to 220 C.M.R. § 1.10(3), the Department incorporated by reference the Company’s annual return to the Department for the year 2003 (Tr. at 37-38).

revenue bonds (“MDFA Bonds”) issued by EEC_o and approved by the Department in Eastern Edison Company, D.P.U. 93-69 (1993).² The MDFA Bonds became callable on August 1, 2004 and are scheduled to mature on August 1, 2008 (Exh. MEC-1, at 3).

MEC_o proposes to refinance the MDFA Bonds with new tax-exempt refunding bonds (“New MDFA Bonds”) having a maturity of up to 20 years (id.). In order to complete the proposed refinancing, MEC_o will enter into one or more loan and trust agreements with MDFA in order to borrow an aggregate principal amount of up to \$40,000,000 to replace the outstanding MDFA Bonds with the New MDFA Bonds at a lower interest rate (id.). The New MDFA Bonds will be structured as multi-modal bonds, providing various interest rate options (id.). The New MDFA Bonds will provide for the option of either a fixed rate mode, or a variable rate mode with daily, weekly, monthly, auction, commercial paper, term or semi-annual rate (id.). The New MDFA Bonds will be structured so as to permit the Company, with the consent of MDFA, to convert the bonds between interest rate modes (id. at 3-4).

For both the fixed and variable rate modes, the Company proposes a maximum interest rate equal to the then-current rate for U.S. treasuries of similar maturity at time of closing, plus 75 basis points (id. at 10). Notwithstanding this maximum interest rate, MEC_o requests that, if the New MDFA Bonds are no longer considered tax-exempt securities, the maximum

² The MDFA Bonds were issued under the MDFA’s previous name, the Massachusetts Industrial Finance Authority, in order to refinance EEC_o’s then-outstanding pollution control bonds originally issued in 1983, and carry an interest rate of 5 7/8 percent (Exh. MEC-1, at 3; see D.T.E. 93-69, at 7).

interest rate be set equal to the then-current rate for U.S. treasuries of similar maturity at the time of closing, plus 300 basis points (id.).³ According to the Company, these interest rate limits will provide the Company with flexibility to refinance the New MDFA Bonds during their term in the event that market conditions should change (id.; Tr. at 28-29).

The initial interest rate will be established by MDFA, the Company, and underwriters prior to the issuance of the New MDFA Bonds (Exh. MEC-1, at 4). The various modes establish different time periods during which a particular interest rate would remain in effect (id.). The actual rate for each period, other than those related to the auction mode, will be set by the Company's remarketing agent, Lehman Brothers, based upon then prevailing market conditions (id.; Exh. DTE 1-1). If the auction mode is selected, the interest rate on the New MDFA Bonds will be established through the auction procedures set forth in the applicable loan and trust agreement (Exh. MEC-1, at 4).

MECo states that the timing and amounts of the New MDFA Bonds to be actually issued will be determined by the Company based on current market conditions (id., at 8). According to the Company, to ensure that MECo achieves the least-cost interest scenario, initially the bonds will be issued in short-term interest rate modes (Tr. at 10, 17). If the interest rate environment were to change such that MECo determines that it is in the best interest of the Company and ratepayers to convert to fixed interest rates, the Company will avail itself of such rates (id. at 17). The Company estimates that its refinancing of the

³ The New MDFA Bonds will become taxable instruments only in the unlikely event that the pollution control assets financed through this debt are converted to another use (Exh. DTE 1-3; Tr. at 30).

outstanding MDFA bonds will provide a total net present value savings of \$2,057,942 (net of tax effects) (Exh. MEC-1, exh. RGS-3).⁴

In order to provide additional security for the New MDFA Bonds, the Company requests that the Department authorize the issuance of one or more series of first mortgage bonds (“Pledged Bonds”) not exceeding \$40,000,000 as security for the New MDFA Bonds (Exh. MEC-1, at 4-5; Tr. at 3). The Pledged Bonds may be pledged to the trustee for the New MDFA Bonds or to an insurer in connection with obtaining bond insurance for the New MDFA Bonds (Exh. MEC-1, at 11). In the event of a default on the loan and trust agreement for the New MDFA Bonds, interest and principal due on the Pledged Bonds will be paid to the trustee for the New MDFA Bonds or to the bond insurer, as appropriate (id. at 13). However, in no event will the total principal and interest paid to the holders of the New MDFA Bonds, or such bond insurer, exceed the amounts provided for in the New MDFA Bonds (id.).

The Pledged Bonds would be issued in one or more series, but no Pledged Bonds will mature more than 20 years from the date of issuance (id. at 12). The interest rate and maturity of the Pledged Bonds would parallel the provisions of the New MDFA Bonds (id. at 13). Moreover, the Pledged Bonds would be sold at a price not less than 95 percent nor more than 100 percent of their principal amount (id. at 12). MECo states that the Pledged Bonds may or may not be callable, refundable, or puttable (id.). Interest on the Pledged Bonds would not be

⁴ The Company relied on a six percent discount rate for its net present value analysis of savings. In selecting this discount rate, the Company explained that it used a “matched fund” rate -- an estimate of what the existing bonds could be refunded at for their remaining lives (Exhs. MEC-1, exh. RGS-3; DTE-1-12).

required to be paid so long as interest payments are made on the New MDFA Bonds (id., at 13). According to the Company, because MECo will receive no proceeds from the Pledged Bonds, the issuance of these bonds will not affect its capitalization (id., at 12).

B. Exemption from Competitive Bidding Requirements of G.L. c. 164, § 15

MECo seeks an exemption from the competitive bidding requirements of G.L. c. 164, § 15 pertaining to the issuance of debt securities (Exh. MEC-1, at 16; Tr. at 6). The Company states that, depending on the type of security and market conditions at the time of issuance, the securities will be sold (1) by competitive bidding, (2) by negotiations with underwriters, (3) by negotiations directly with investors, (4) through one or more agents, or (5) to one or more agents as principal for resale to investors (Exh. MEC-1, at 9). The Company contends that, if market conditions warrant the use of negotiated offerings, an exemption from competitive bidding requirements will facilitate the Company's ability to respond more quickly to market changes, which MECo represents is essential to the facilitation and effectiveness of negotiated offerings (id. at 16).

C. Exemption from Par Value Requirements of G.L. c. 164, § 15A

MECo also requests an exemption from the par value requirements of G.L. c. 164, § 15A (Tr. at 6). The Company explains that it may from time to time desire to fix the rates of its proposed bonds for a specific term and that investors may desire to purchase these fixed-rate bonds at a discount in order to take advantage of tax benefits (id. at 21). Therefore, the Company considers it appropriate to provide for a discount on fixed-rate bonds in order to satisfy investor demand (id.). Also, because the terms and conditions of the Company's

Pledged Bonds must track the MDFA Bonds, to the extent that the MDFA Bonds provide for a discount, the Pledged Bonds would also have to provide for an identical discount provision (id. at 22).⁵

III. CAPITAL STRUCTURE

The Company states that its capitalizable utility plant, as of March 31, 2004, was \$2,342,310,000 (RR-DTE-2, at 1). The accumulated depreciation against this plant is \$781,484,000 (id.). Thus, as of March 31, 2004, the Company has a net utility plant of \$1,560,826,000 (id.).

As of March 31, 2004, the Company reported a total capitalization of \$1,904,944,000, consisting of \$252,209,000 in long-term debt, \$4,727,000 in preferred stock, and \$1,649,008,000 in common equity (Exh. DTE 1-11, at 3; RR-DTE-2). On the same date, the Company's common equity balance consisted of \$59,953,000 in common stock, \$1,508,991,000 in other paid-in capital, \$203,729,000 in retained earnings, and an accumulated other comprehensive loss associated with losses on equity investments and additional pension liabilities of \$123,665,000 (Exh. DTE 1-11, at 7; RR-DTE-2, at 1). Excluding the accumulated other comprehensive loss, as well as \$1,023,272,000 in acquisition premiums booked to other paid-in capital, from capitalization, the Company's capital structure as of March 31, 2004 consisted of 25.06 percent long-term debt, 0.47 percent preferred stock, and 74.47 percent common equity (RR-DTE-2, at 1). The Company's total reported

⁵ The MDFA Bonds are to be sold at a price not less than 95 percent nor more than 100 percent of their principal amount (Petition at 7; Tr. at 21-22).

capitalization, excluding retained earnings, amounted to \$763,608,000 (id.). Therefore, the Company concluded that it would have \$832,160,000 more in plant than securities outstanding, thereby meeting the requirements of the net plant test (id.).

IV. STANDARD OF REVIEW

A. Long-Term Debt and Preferred Securities Issuance

In order for the Department to approve the issuance of stocks, bonds, coupon notes, or other types of long-term indebtedness⁶ by an electric or gas company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) (“Fitchburg II”), citing Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 394 Mass. 671, 678 (1985) (“Fitchburg I”). Second, the Department must determine whether the Company has met the net plant test.⁷ Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

⁶ Long-term refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.

⁷ The net plant test is derived from G.L. c. 164, § 16. When the Department approves an issue of new stock, bonds, or other securities by a gas or electric company, if it determines that the fair structural value of the plant and of the land and the fair value of the nuclear fuel, gas inventories, or fossil fuel inventories owned by such company is less than its outstanding stock and debt, it may prescribe such conditions and requirements as it deems best adapted to make good within a reasonable time the impairment of the capital. See G.L. c. 164, § 16.

The Supreme Judicial Court has found that, for the purposes of G.L. c. 164, § 14, “reasonably necessary” means “reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency.” Fitchburg II at 842, citing Lowell Gas Light Company v. Department of Public Utilities, 319 Mass. 46, 52 (1946) (“Lowell Gas”). In cases where no issue has been raised about the reasonableness of management decisions regarding the requested financing, the Department limits its G.L. c. 164, § 14 review to a determination of reasonableness of the Company’s proposed use of the proceeds of a stock issuance. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990). The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance "is not limited to a 'perfunctory review.'" Fitchburg I at 678; Fitchburg II at 842, citing Lowell Gas at 52.

Regarding the net plant test, a company is required to present evidence showing that its net utility plant (utility plant less accumulated depreciation) is equal to or in excess of its total capitalization. Berkshire Gas Company, D.T.E. 03-89, at 15-16 (2004); Colonial Gas Company, D.P.U. 84-96, at 5. The Department’s definition of total capitalization is the sum of long-term debt, preferred stock, and common stock outstanding.⁸ D.T.E. 03-89, at 15-16;

⁸ For purposes of the net plant test, the premium on common stock is treated as common stock. The Berkshire Gas Company, D.T.E. 03-89, at 23 (2004).

D.P.U. 84-96, at 5. Where issues concerning the prudence of the Company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

B. Exemption from G.L. c. 164, §§ 15 & 15A

Pursuant to G.L. c. 164, § 15, an electric or gas company offering long-term bonds or notes in excess of \$1,000,000 in face amount payable at periods of more than five years after the date thereof must invite purchase proposals through newspaper advertisements. The Department may grant an exemption from this advertising requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, § 15. The Department has found it in the public interest to grant an exemption from the advertising requirement where there has been a measure of competition in private placement. See, e.g., Berkshire Gas Company, D.P.U. 89-12, at 11 (1989); Eastern Edison Company, D.P.U. 88-127, at 11-12 (1988); Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). The Department also has found that it is in the public interest to grant a company an exemption from the advertising requirement when a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). However, G.L. c. 164, § 15 requires advertising as the general

rule, and waiver cannot be automatic, but must be justified whenever requested. Bay State Gas Company, D.T.E. 02-73, at 14.

Pursuant to G.L. c. 164, § 15A, a company is required to sell long-term bonds, debentures, notes, or other evidence of indebtedness at no less than the par value or face amount unless sale at less than par value is found by the Department to be in the public interest. See, e.g., Boston Edison Company, D.P.U. 91-47, at 13 (1991). The Department has found that it is in the public interest to grant an exemption from the par value requirement where market conditions make it difficult at times for a company to price a particular issue at par value and simultaneously offer an acceptable coupon rate to prospective buyers. Bay State Gas Company, D.P.U. 91-25, at 9 (1991). The Department also has found that it is in the public interest to authorize the issuance of debt securities below par value where this technique offers a company enhanced flexibility in entering the market quickly to take advantage of prevailing interest rates, particularly if this benefits the company's ratepayers in the form of lower interest rates and a lower cost of capital. Id.; see also Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991). If the Department authorizes a company to issue debt securities at less than par value, the Department may establish the method by which the company is required to amortize any discount.⁹ G.L. c. 164, § 15A; see, e.g., Boston Gas Company, D.P.U. 92-127, at 8; Boston Edison Company, D.P.U. 91-47, at 15.

⁹ The discount is the difference between the par value of a bond, note, or other debt security and the actual issue price when the actual issue price is less than par value.

V. ANALYSIS AND FINDINGS

A. Issuance of Long-Term Debt

1. “Reasonably Necessary” Standard

The Company has stated that its proposal to execute one or more loan agreements or supplemental loan agreements with MDFA in an amount not to exceed \$40 million is for the purposes of (1) issuing new tax-exempt debt to refinance outstanding tax-exempt bonds together with related financing and security agreements, and (2) issuing one or more additional series of Pledged Bonds (Exh. MEC-1, at 3; Tr. at 3). The Pledged Bonds will be issued to secure the Company’s obligations for payment of the principal, interest, and premium, if any, on the New MDFA Bonds (Exh. MEC-1, at 11).

The Department has found that issuing debt for the purposes of refinancing long-term debt is a “legitimate utility purpose” as contemplated by G.L. c. 164, § 14. Blackstone Gas Company, D.T.E. 03-65, at 4 (2003); Western Massachusetts Electric Company, D.T.E. 02-49, at 10 (2003); New England Power Company, D.P.U. 95-101, at 11 (1995). Likewise, the Department has found that redeeming existing securities and funding utility operations is a customary purpose of securities issuances. Southern Union Company, D.T.E. 03-3, at 18 (2003); Berkshire Gas Company, D.P.U. 96-64, at 8-9 (1996). Because the Company’s stated purposes of issuing said debt fall within these parameters, the Department finds that Meco’s proposed issuance of long-term debt securities in an aggregate amount up to \$40 million is reasonably necessary to accomplish a legitimate purpose in meeting its service obligations in accordance with G.L. c. 164, § 14.

2. Net Plant Test

With regard to the net plant test, the Department requires companies to demonstrate that their net utility plant equals or exceeds their total capitalization, thereby supporting the additional amount of financing, pursuant to G.L. c. 164, § 16. Colonial Gas Company, D.P.U. 84-96, at 5 (1984). The purpose of the net plant test is both to protect ratepayers from excessive rates associated with overcapitalization and to assure the creditors of a utility that the company has sufficient tangible assets to cover its liabilities. Boston Gas Company, D.T.E. 03-40, at 321 (2003); Colonial Gas Company, D.P.U. 1247-A at 7 (1982); Report of the Department of Public Utilities Relative to the Capitalization of Gas and Electric Companies, Senate Document No 315, at 8-15 (January 1922). Under the net plant test, a company must present evidence showing that its net utility plant (utility plant less accumulated depreciation) is equal to or greater than its total capitalization (the sum of debt, preferred stock and common stock outstanding). Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

The Company's net capitalizable plant as of March 31, 2004 for calculating the net plant test is \$1,595,768,000, while its total capitalization is \$763,608,000, resulting in an excess of net utility plant over outstanding capital of \$832,160,000 (RR-DTE-2, at 2). The Department finds that the Company's current plant investment is, therefore, sufficient to support the proposed issuance of \$40 million in long-term debt securities.¹⁰

¹⁰ Issues concerning the prudence of the Company's capital financing have not been raised in this proceeding, and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its customers. The Department's determination in this Order is not in any way to be
(continued...)

3. Maximum Interest Rates

For both the fixed and variable rate modes, MECo proposes a maximum effective interest rate equal to the then-current rate for U.S. treasuries of similar maturity, plus 75 basis points (Exh. MEC-1, at 10). In the event that the New MDFA Bonds become taxable securities, the Company proposes that the maximum interest rate on the New MDFA Bonds will revert to a rate not exceeding the then-current rate for U.S. treasuries of similar maturity plus 300 basis points (id.). The Department recognizes that the potential for financial market volatility requires the allowance of a measure of flexibility in setting maximum interest rates for long-term debt securities. Boston Edison Company, D.T.E. 03-129, at 16-17 (2004); Berkshire Gas Company, D.T.E. 03-89, at 26 (2004); Southern Union Company, D.T.E. 01-32, at 12 (2001). In addition, in the case of variable rate debt, the Department has recognized that the maximum rate must be sufficient to allow the interest rate to vary over the life of the debt instrument without undue risk to either the investor or the insurer. Boston Edison Company, D.P.U. 89-44, at 4-5 (1989).

MECo determined these maximum rates based on the advice of its investment advisor (Tr. at 27, 30). The Company contends that these interest rate limits will provide the Company with flexibility to refinance the new MDFA Bonds during their term in the event that market conditions should change (Exh. MEC-1, at 10; Tr. at 28-29). The Company has shown that variable interest rates will likely be approximately 3.5 percent over the next five years

¹⁰ (...continued)
construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing.

(Exh. DTE 1-10). A spread between the Company's interest rate on debt and the proposed maximum interest rate is necessary to provide some cushion against interest rate increases over the term of the instruments (Exh. MEC-1, at 10; Tr. at 29). The 75 basis points cap for tax-exempt securities and the 300 basis points cap for non tax-exempt securities provides an adequate cushion to allow for market fluctuations over the proposed period.

In view of historic Treasury and utility bond yields, current market conditions and long-term economic expectations, the Department finds that the Company has appropriately evaluated the market for both fixed and variable interest rate securities in determining the proposed maximum interest rate for these instruments. Boston Edison Company, D.T.E. 03-129, at 17 (2004); see Southern Union Company, D.T.E. 03-64, at 11-12 (2003). Therefore, the Department finds a maximum interest rate cap of 75 basis points for tax-exempt securities and a maximum interest rate cap of 300 basis points for non tax-exempt securities for the issuance of variable term and fixed rate debt securities is appropriate.

B. Exemption From G.L. c. 164, § 15

MECo represents that an exemption from the competitive bid provisions of G.L. c. 164, § 15 is appropriate because a competitive bid process may limit the Company's ability to price and market the securities, as well as to determine the form and timing of an issuance (Exh. MEC-1, at 16-17). The Department recognizes the role of the MDFA in assuring that utility companies relying on tax-exempt debt issuances will generate substantial savings in interest expense and, thereby, provide the benefits of competition and timely issuance of securities to the Company's ratepayers. D.T.E. 93-69, at 18; Nantucket Electric

Company, D.P.U. 90-334, at 5 (1991). Moreover, MECo relies on a variety of investment banking firms to participate in its tax-exempt facilities, thus demonstrating the presence of a competitive market for its tax-exempt debt (Tr. at 20). The Company has demonstrated that underwriting assistance is an important element in evaluating market conditions and the appropriate structure of a transaction (Exh. MEC-1, at 16-17). Confining MECo's debt placement to a competitive bid process may reduce the Company's ability to execute the loan agreement with the MDFA in a manner that takes full advantage of market conditions (id. at 16).

The Department finds that the Company has demonstrated that the benefits of a competitive solicitation process are enjoyed by its ratepayers through the negotiated public offering process, and that the additional cost and time associated with a competitive solicitation process would not produce a more favorable result to ratepayers. Western Massachusetts Electric Company, D.T.E. 02-49, at 12 (2003). The Department further finds that the Company has shown that a competitive bid process could jeopardize investor interest, ultimately jeopardizing the financial benefits available to ratepayers under the negotiated public offering process. Fitchburg Gas and Electric Light Company, D.T.E. 01-43, at 8 (2001); New England Power Company, D.T.E. 00-53, at 10 (2000). In this case, it is appropriate to allow the Company the flexibility offered by the negotiated public offering process in order to facilitate the Company's access to the capital markets. Boston Edison Company, D.T.E. 00-62, at 11 (2000). Therefore, based on the foregoing analysis, the Department finds

that it is in the public interest to exempt the Company from the advertising requirements of G.L. c. 164, § 15.

C. Exemption From G.L. c. 164, § 15A

Regarding the Company's request for an exemption from the par value requirements of G.L. c. 164, §15A, the Department recognizes that investors rely on, and expect, such discounts to serve as a fine-tuning device to ensure that the coupon rate matches market expectations, thereby offering the Company increased flexibility in placing its issuances with prospective investors. Consequently, this increased flexibility enables a company to issue debt securities in a timely manner and take advantage of favorable market conditions. Berkshire Gas Company, D.T.E. 03-89, at 16-17 (2004); Southern Union Company, D.T.E. 01-32, at 8, 12 (2001); Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991); Bay State Gas Company, D.P.U. 91-25, at 10 (1991). Moreover, because the Pledged Bonds must track the terms and conditions of the New MDFA Bonds, which may be sold at a discount, an exemption from the requirements of G.L. c. 164, § 15A is necessary to ensure that the Company may successfully issue the Pledged Bonds (Exh. MEC-1, at 13; Tr. at 22-23). For these reasons, the Department finds that it is in the public interest to exempt the Company from the par value requirements of G.L. c. 164, § 15A. Consistent with this exemption, the Department directs the Company to amortize the amount of any discount from par value over the life of the new issuance series on a straight-line basis. Massachusetts Electric Company, D.P.U. 96-109, at 8-9 (1997).

VI. ORDER

Accordingly, after due notice, hearing, and consideration, the Department

VOTES: That the execution, from time to time on or before December 31, 2004, by Massachusetts Electric Company of one or more loan agreements or supplemental loan agreements with the Massachusetts Development Finance Agency in an aggregate principal amount not exceeding \$40 million in connection with the issuance of new of new tax-exempt debt to refinance outstanding tax-exempt bonds, together with related financing and security agreements, is reasonably necessary for the purposes for which such issuance has been authorized; and

VOTES: That the issuance, from time to time on or before December 31, 2004, by Massachusetts Electric Company of one or more series of first mortgage bonds in a principal amount not exceeding \$40 million in aggregate, each such issue of said bonds to bear the same rate of interest as the corresponding issue of Massachusetts Development Finance Agency bond issue or issues referred to herein, to be pledged as security for such Massachusetts Development Finance Agency bond issue or issues referred to herein, together with related financing and security agreements, is reasonably necessary for the purposes for which such issuance has been authorized; and

VOTES: That Massachusetts Electric Company's execution of one or more loan agreements from time to time on or before December 31, 2004 with the Massachusetts Development Finance Agency in an amount not to exceed \$40 million, as well as the issuance by Massachusetts Electric Company of first mortgage bonds intended as security for the

aforementioned Massachusetts Development Finance Agency bond issue or issues in an amount not to exceed \$40 million, at less than par value, is in the public interest, and such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15A; and that if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new issuance series on a straight-line basis; and it is

VOTES: That the issuance, from time to time on or before December 31, 2004, by Massachusetts Electric Company of up to \$40 million in long-term debt securities intended as security for the Massachusetts Development Finance Company bond issue or issues referred to herein, at less than par value pursuant to G.L. c. 164, § 15A, is in the public interest, and that if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new issuance series on a straight-line basis; and it is

ORDERED: That the execution, from time to time on or before December 31, 2004, of one or more loan agreements with the Massachusetts Development Finance Agency in connection with the issuance of new tax-exempt debt to refinance outstanding tax-exempt bonds, in an amount not to exceed \$40 million together with related financing and security agreements and the issuance of one or more series of first mortgage bonds in an amount not to exceed \$40 million for the purpose of pledging with a bond insurer as security for such loan agreements with the Massachusetts Development Finance Agency is reasonably necessary for the purposes for which such issuance has been authorized; and it is

FURTHER ORDERED: That such authorized long-term debt securities shall carry a fixed or variable interest rate not to exceed 75 basis points above the then-current rate for

U.S. treasuries of similar maturity or in the event that the said bonds become taxable securities, the interest rate will not exceed 300 basis points above the then-current rate for U.S. treasuries of similar maturity; and it is

FURTHER ORDERED: That the net proceeds from such sale of all such securities shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED: That Massachusetts Electric Company's execution of one or more loan agreements from time to time on or before December 31, 2004 with the Massachusetts Development Finance Agency in an amount not to exceed \$40 million, as well as the issuance by Massachusetts Electric Company of first mortgage bonds intended as security for the aforementioned Massachusetts Development Finance Agency bond issue or issues in an amount not to exceed \$40 million, without complying with the competitive bidding provisions of G.L. c. 164, § 15 is in the public interest, and that such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15; and it is

FURTHER ORDERED: That Massachusetts Electric Company's execution of one or more loan agreements from time to time on or before December 31, 2004 with the Massachusetts Development Finance Agency in an amount not to exceed \$40 million, as well as the issuance by Massachusetts Electric Company of first mortgage bonds intended as security for the aforementioned Massachusetts Development Finance Agency bond issue or issues in an amount not to exceed \$40 million, at less than par value, is in the public interest, and such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15A; and that

if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new issuance series on a straight-line basis; and it is

FURTHER ORDERED: That Massachusetts Electric Company shall comply with all other directives contained in this Order; and it is

FURTHER ORDERED: That the Secretary of the Department shall within three days of the issuance of this Order cause a certified copy of it to be filed with the Secretary of the Commonwealth.

By Order of the Department,

Paul G. Afonso, Chairman

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within 20 days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of 20 days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971.